

THE POSSIBILITY OF AMENDING THE IRAQI CONSTITUTION OF 2005**Qutaiba Sulaiman Hameed Alborisha**

20225270@std.neu.edu.tr

Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye

Assist.Prof.Dr. Tavga Abbas Albustani

tavga.towfiq@neu.edu.tr

Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye

ABSTRACT

The process of constitutional amendments is one of the means adopted by the political machine to evolve to its social and financial reality, and to adjustments in the infrastructure of society. Its miles a manner that takes place in an orderly and easy manner in strong democratic systems. For this reason, the constitutional change involves increase the present legitimacy to confront some problems that the constitution did no longer cope with. the present or to confront the modifications and trends which might be emerging at the political, financial and social lifestyles within the state, and in this manner, the constitutional reform targets via the modification to defend it and make sure its continuity. however, they locate it tough to amend the charter, especially in inflexible constitutions that require complicated techniques all through their modification, in on the equal time, there may be a need for constitutional balance to protect it, which ought to be inside a narrow scope in order no longer to lose its role of highness and lofty, that the end result of amending the constitution may affect all public government, including the legislative authority, including the dissolution of the Parliament or the dissolution of one in all its houses, or at the constitutional middle of the government authority and the position of the presidency. no matter that, there are regulations that obstruct the manner of amending the constitution, now and again completely and completely, and on occasion in part or temporarily, and other regulations related to the guidelines and laws of human rights declarations and articles that hold and hold the principles of justice in society which might be blanketed in most constitutions and whose texts and important components of them remain constant.

Years after the implementation of the existing 2005 Iraqi constitution, there were numerous tries to amend and reform the constitution, but stood in the front of the limitations embodied in Articles (126, 142). This was a semi-take a look at to look at the suitability of a few constitutional texts to the environmental and social desires of Iraq, hence growing an opportunity and possibility to amend the charter. Here we ask, what's the opportunity of amending the new 2005 Iraqi constitution? What are the desired reforms and changes?

Keywords: amending the constitution, reasons for amending the constitution, constraints of amending the charter, the 2005 Iraqi constitution, boundaries and the possibility of amending the charter, constitutional reform.

1. Introduction**I.1 Introductory introduction to the definition of the topic**

Since the constitution is a man-made document, which sets its basic rules, it is subject to shortcoming, ambiguity and deficiency, as well as there are many factors affected by that document, including political, cultural and social considerations, it is not logical that the rules of constitutional law in a particular state remain fixed, it has to keep pace with the developments resulting from society, otherwise the state is exposed to revolutions and uprisings by the people and thus results in that case the need to review the constitutional texts in proportion to the variables and developments This leads to the need to amend some texts or articles of the Constitution.

It must be said that most of the constitutions of contemporary countries are rigid constitutions, including the Iraqi Constitution 2005 in force, the Iraqi legislator has included two articles in the Constitution for the procedures for amending it, namely Article (126) for normal circumstances, and Article (142) as an exceptional case, which stipulated that the amendment be subject to a popular referendum and that it is not rejected by two-thirds of the three Iraqi provinces, so that it made it almost impossible, the possibility of any amendment in the Iraqi Constitution 2005.

During the years that have passed and after the application of the constitution, gaps, shortcomings and ambiguity have emerged Some texts that need to be amended that suit the environment and the needs of Iraqi society and even in political and economic terms, so they became an opportunity for what constitutional texts should be, because of their importance from the development of society from all different areas of life, social, economic and political, and keep pace with developments in it, and the importance of constitutional amendment lies in reforming the constitutional system, and achieving its goals including the addition of The necessary articles, the interpretation of ambiguous texts, filling the gaps in the constitution or canceling some of its articles or superfluous texts. Even some of its texts need to breathe life into it to disrupt it and not apply it, and this formed the so-called constitutional crisis.

1.2 Importance of the study

The importance of the study lies in the fact that it deals with a very important topic, which is the constitutional amendments.

And the need to activate and support the methods of political reform that lead to positive changes, and seek through constitutional amendments to develop modern constitutions. As well as the extent of the possibility and opportunities to make amendments and reforms to the Iraqi Constitution 2005 in force, which is one of the rigid constitutions so as to present the obstacles that hinder the process of amending the Constitution and the statement of reforms and amendments required therein.

1.3 Hypothesis of the study

The amendment of the constitution in many cases has negative effects on the state and society as well, due to the instability of the constitution and leads to the lack of confidence of the masses in it, and it loses its status and supremacy, and at the same time the situation requires amending the constitution, and that procession developments in society in all areas Sometimes amending

the constitution is necessary, otherwise the peoples will resort to uprisings and revolutions as a result, but the goal here is to reach the possibility of making necessary amendments The Constitution of the Republic of Iraq 2005 under Articles 126 and 142 rigid, and how to satisfy the peoples and create a state of stability and security at various levels.

1.4 . Objectives of the study

The study aims to clarify the concept of constitutional amendments, which is the reconsideration of constitutional texts by the competent constitutional bodies, and the aim of the study is to highlight the possibility of amending the Iraqi Constitution 2005 and the extent of the necessity and need for those texts to amend and review, and the appropriateness of amending the Constitution to the circumstances, requirements and developments in society.

1.5. The problem of the study

The problem of the study lies in how to amend the constitution and its complex procedures , ensuring the need to amend the constitution and its stability at the same time.

Another problem is the possibility of amending the current Iraqi Constitution of 2005 due to the difficulties and obstacles facing this amendment .

1.6 Study methodology

The study followed the approach analytically as the concept of constitutional amendment, its motives, causes and impact on the legislative and executive authorities, as well as a comparative approach, which relied on the experience of Arab, European and even American constitutions and other experiences of constitutions to support our work and enrich it somewhat with some comparison with other constitutions, and the historical approach was also followed in this study by referring to past events, and the inductive approach, which is the presentation of different opinions of constitutional jurisprudence.

2. What is the amendment to the Constitution

With the development of society in all fields, it led in the result to the emergence of new laws or the need to amend old laws that do not fit with the tremendous development that occurs over time, and were in need of amendments that suit the new changes.

There are also many goals and motives that the competent authorities resort to to amend constitutions, including to complete the legislative deficiency or to change the system of government, and with this they find it difficult to amend the constitution, especially in rigid constitutions, which needs complex processes during their amendment, and at the same time constitutions need to be stable in order not to lose their status.

We have divided this chapter into two sections: we deal in the first section of the concept of amending the Constitution and the second section: the need for constitutional amendment and its scope.

1.2 The concept of amending the Constitution

For more knowledge of the concept of amending the constitution, we will address two requirements, the first of which is the definition of amending the constitution and its origin, and the second requirement is the types of amending the constitution and its subjectivity.

1.1.2 Definition of constitutional amendment

Through the definition of amending the constitution and how to distinguish between it and its suspension and cancellation, we can reach an accurate and correct concept of it, we address the definition of amending the constitution in its first section and in its second section we will address the subjectivity of amending the constitution .

2.1.2 What is meant by amending the Constitution

The term modification is mentioned in the Holy Qur'an in the Almighty's saying: "He who created you, so he will do justice to you." Some of the ¹ commentators refer to what is meant by the word amendment in this verse, the divine will of the Creator Almighty is heading to correct the actions of man in the event that they go out of the right and proper way, it is most of it that changes the act of human beings from the bad image to the optimal and good image, and the amendment means the calendar,² the meaning of the amendment is language, the modification of the thing is corrected, and it is said that his justice is a moderate amendment, i.e. his people will be restored. ³

Idiomatically, it is the addition or deletion of one or more texts of the constitution, or replacing them with a new text.⁴

It is noted from the above definition that the definition in explaining the concept of amending the constitution was limited to adding a constitutional text to the constitution or deleting a text from the constitution, while amending the constitution is to reconsider the existing constitutional texts.⁵

Another definition of an amendment is that it is a proposal to change a text subject to ratification by the Assembly. It is also noted from the definition that it did not distinguish between a legal amendment that focuses on an ordinary legislative law and a constitutional amendment that focuses on the provisions of the Constitution.⁶

In the field of constitutional jurisprudence, the amendment has been defined as the review of the provisions of the constitutional document in whole or in part, and the constitutional amendment is also known as a mechanism to change some or all of the provisions of the constitution in order to address the defect in them and to achieve specific goals.

¹ Verse (7) of Surat Al-Infitar.

² Dr. Maytham Manfi Kazem Al-Amidi, The limits of amending the constitution and its impact on the legislative and executive authorities, research published on the link www.annbaa.org the date of the visit 8/3/2021.

³ Al-Razi, Imam Muhammad ibn Abi Bakr Abd al-Qadir 2009, Mukhtar al-Sahih, Misr Printing, Cairo, p. 418.

⁴ Mishaal Zahir Al-Madi, Constitutional Amendments and their Impact on the Jordanian Constitutional System, Master's Thesis, Al al-Bayt University, Karbala, 2015-2016, p. 10.

⁵ Dr. Akab Ahmed Muhammad, The effectiveness of Article (126) in amending the Constitution of the Republic of Iraq for the year 2005 in the light of Article (142) thereof, Tikrit University Journal of Law, Year 3, Volume 3, Issue 1, Part 1, September 2018, p. 329.

⁶ Iman Qasim, Amending the Constitution under the Iraqi Constitution of 2005, Journal of Al-Rafidain University College of Science, No. 31, 2012, p. 99.

⁷Amending a constitution can also be defined as a process that allows its provisions to be changed. ⁸

The constitutional texts have dealt with different terms to indicate the meaning of the amendment, and this varies from one country to another, and these terms and expressions are the phrase revision, change, replacement, re-legislate.... In foreign constitutions, the term amendment is often used, for example the U.S. Constitution in Article 5.⁹

The approach of the Constitution of the Republic of Iraq for the year 2005 on the same approach, where Articles 126 and 142 referred to the mechanism of its amendment, as for the Egyptian Constitution of 2014, Article 226 of it referred to the amendment of the Constitution, and the Japanese Constitution of 1946 has taken the word amendment, in Chapter IX, which came under the title of amendments, and the Swiss Constitution of 1999 has adopted the term comprehensive and partial review, in Chapter II, which came entitled Initiative and Referendum, where the article began 138 which included the popular initiative to propose a comprehensive revision of the Federal Constitution.¹⁰

It is also defined as a constitutional procedure stemming from the will of the people based on the proposal of the competent authority, which aims to bring about a total or partial change in the provisions of the Constitution in accordance with specific rules, regulated by its texts.¹¹

3. The possibility of amending the Constitution of the Republic of Iraq 2005

There is the possibility of amending all constitutions of the countries of the world, whether they are in addition or deletion, according to the body authorized by the constitution itself, to make and approve amendments, including the Constitution of the Republic of Iraq 2005, which is considered one of the rigid constitutions, which is difficult to amend for many considerations, including, that the amendment is subject to a popular referendum, and the requirement of approval of two-thirds of the three Iraqi provinces, as stated in Articles (126 and 142) of the Iraqi Constitution 2005, where there were several attempts To amend but always collide with these two articles, and this is what makes the amendment almost impossible and considered one of the rigid constitutions par excellence, and to clarify the obstacles and the extent of the possibility of amending the constitution as well as the reforms required in its texts we must divide this chapter into two sections show in the first the obstacles and possibilities facing the amendment of the constitution and address in the second the importance and reasons for amending the constitution and the reforms required in its texts.

1.3 Obstacles and possibilities for amending the Constitution

There are challenges and obstacles facing the process of amending the constitution, and in return there are opportunities and possibility to amend the constitution, and in this context we

⁷ Dr. Maytham Munfi Kazem Al-Amidi, previous source.

⁸ Dr. Abdel Fattah Omar, Al-Wajeez in Constitutional Law, Center for Studies, Research and Publishing, Dr. I, 1957, Tunis, p. 211.

⁹ Donia Zad Souieh, Procedural and Substantive Controls for Constitutional Amendment in Algeria, Master's Thesis, University of Hajj Lakhdar – Batna, Algeria, 2012-2013, p 10

¹⁰ Dr. Maytham Munfi Kazem Al-Amidi, *ibid*.

¹¹ Shamil Hafez Shanani Al-Moussawi, Amending the Constitution and its Impact on the System of Government in the State, 1st Edition, Arab Center, 2018, Egypt, p. 38.

will address these two topics through two requirements as follows:

1.1.3 Obstacles to amending the Constitution

In this requirement, we will address the obstacles to amendment in accordance with the Iraqi Constitution of 2005, which relate to Articles (126) and (142) by standing on the usual amendment in the first section, and the second section, the exceptional amendment.

3.1.1.1 Customary modification

After completing the work of the interim committee, the usual way of amending the constitution is applied as stated in Article (126) of the new Iraqi constitution, which is not a smooth method, the Iraqi constitution 2005 is considered one of the rigid constitutions, for taking difficult mechanisms to make any amendment to the constitution, which has been in force since 20/5/2006¹². Which states the following:

- 1- The President of the Republic and the Council of Ministers collectively or for five (1/5) members of the House of Representatives, may propose amendments to the Constitution.
- 2- The basic principles contained in Chapter I and the rights and freedoms contained in Chapter Two of the Constitution may not be amended except after two consecutive electoral cycles, and upon the approval of two-thirds of the members of the House of Representatives, the approval of the people by referendum and the ratification of the President of the Republic within seven days.
3. Other articles not provided for in item (second) of this article may not be amended except after the approval of two-thirds of the members of the House of Representatives, the approval of the people by a referendum, and the ratification of the President of the Republic within seven days.
4. No amendment may be made to the articles of the Constitution that would detract from the powers of the regions that are not within the exclusive competences of the federal authorities except with the approval of the legislative authority in the region concerned and the approval of the majority of its inhabitants by referendum.
5. (a) The amendment shall be deemed to have been ratified by the President of the Republic after the expiry of the period stipulated in clauses (second and third) of this Article in the event of its non-ratification.

The amendment shall be effective from the date of its publication in the Official Gazette.¹³

It is noted on the aforementioned text, that the quorum required to propose amending the constitution is one-fifth of the number of members of the House of Representatives, and this quorum does not correspond to the step of amending the constitution and was rather to make the quorum is the absolute majority of the total number of members of the Council.¹⁴

Although he granted the right to propose amendment to the President of the Republic and the Council of Ministers collectively or to five members of the Council of Representatives, but it did not allow the amendment of the basic principles contained in Chapter I of it and the rights

¹² Muhammad Ahmed Mahmoud, op. cit., pp. 102-103.

¹³ Article (126) of the Iraqi Constitution of 2005.

¹⁴ Dr. Akkab Ahmed Muhammad, op. cit., p. 335.

and freedoms contained in Chapter II of the Constitution only after two consecutive electoral sessions of the Iraqi Council of Representatives and here put a time and substantive ban, and demanded for constitutional amendment the approval of two-thirds of the members of the Council of Representatives and the approval of the people referendum on the amendments, and the ratification of the President of the Republic within seven days.¹⁵

The time restrictions set by the amendment authority to amend Chapter One, which includes the basic principles of the State, and the public rights and freedoms contained in Chapter Two, which are two consecutive electoral cycles, have now expired in accordance with Article (126), which is eight years from the date of entry into force of this Constitution.¹⁶

It is noted through the fourth paragraph of Article (126), that the regions and governorates that are not organized in a region participate as political and constitutional units in building the will of the federal state by participating in the process of amending the federal constitution, as an expression of their constitutional independence and preservation, and in compliance with their union under .

This state and its participation in the exercise of political power in it, but the Iraqi constitution ignored this and did not regulate the constitutional rules to ensure the participation of the regions in the process of federal constitutional amendment, but it stipulated not to reduce the powers of the regions as an objective ban on the power of amendment.¹⁷

2.1.1.3 Extraordinary Amendment

This type of amendments is an exception to the provisions of Article (126) related to a regular amendment to the Constitution, where Article (142 / First) of the existing Iraqi Constitution of 2005 stipulates that (the House of Representatives shall form at the beginning of its work a committee of its members that shall be representative of the main components in Iraqi society, and its task is to submit a report to the Council of Representatives within a period not exceeding four months, including a recommendation for the necessary amendments that can be made to the Constitution, and the committee shall be dissolved, after deciding on its proposals).¹⁸

Thus, the constitution has required the formation of a committee of members of the House of Representatives only, and for this does not participate in the committee members from outside the House of Representatives, but that does not prevent from domesticating and calling advice and opinion from outside the House, has obligated the committee at the beginning of his work, and it turned out that the committee was not formed until after 1/8/2006¹⁹. Which worked on considering the rules of procedure of the Council and the Council formed a temporary committee in accordance with the Constitution and was the formation of a committee consisting

¹⁵ Dr. Abdul-Jabbar Ahmed Abdullah, Eng. Niran Adnan Kazim, The Iraqi Constitution of 2005 between Constitutional Stalemate and Political Stagnation, Journal of Political Issues, Issue 54, Al-Nahrain University, Baghdad, 2018, p. 99.

¹⁶ Dr. Bushra Hussein Saleh, The Iraqi Constitution in force for the year 2005 between challenges and opportunities for amendment (Chapter Three, Chapter One and Chapter Two) as a model, Kufa Magazine, vol. 2, p. 36. 2018, p. 230.

¹⁷ Dr. Akkab Ahmed Muhammad, *ibid.*, p. 336.

¹⁸ Barriz Abdullah Ali, Constitutional Rules Not Subject to Amendment, Master's Thesis, University of Sulaymaniyah, Sulaymaniyah, 2014, p. 135.

¹⁹ Muhammad Ahmed Mahmoud, previous source, p. 101

of 27 members of the House of Representatives, and the addition of two observer members from the Chaldeans to the membership of the committee²⁰. Thus, the work of the Committee is to collect proposals for amendment only without having any contribution or participation in the acceptance or rejection of the amendment.²¹

As for Article (142 / II) of the existing Iraqi Constitution for the year (2005) stipulated (the amendments proposed by the Constitution Amendment Committee are presented at once to the House of Representatives for a vote, and are approved by the approval of the absolute majority of the number of members of the Council) Here we see that this committee is determined by the proposal to the House of Representatives only, which is a temporary article that expires with the expiration of its rule in the first amendment to the permanent Iraqi constitution, which is made under it, then the House of Representatives holds a session to vote on the proposals and may need Sessions²², especially if they deal with those amendments that affect the pillars of the Constitution and its constants significantly towards principles, rights and freedoms, the form of the system of government, the competencies of the federal authorities, the authorities of the regions, governorates and independent bodies, and the amendments that do not affect the principles, principles and faculties contained in the Constitution, they can be accepted and approved by the Council²³. And to follow the conditions, which are as follows: -

- 1- The amendments proposed by the Committee must be submitted at once to the House of Representatives for a vote, and shall be approved by the approval of the absolute majority of the number of members of the House, i.e. the amendment must receive at least 165 votes.
- 2- The amended articles must be submitted to a popular referendum within two months from the date of approval of the amendment in the House of Representatives.
- 3- The referendum on the amended articles must be successful with the approval of the majority of voters, but not rejected by two-thirds of the voters in three governorates or more.²⁴

The first Iraqi parliament had formed on 15/11/2006 a special committee in this regard under the title (Committee on Constitutional Amendments), but this committee was unable to complete its work on the constitutionally scheduled date due to differences in views and party affiliations of the members forming it²⁵

These differences remained ongoing on many outstanding points within the aforementioned committee, which prevented the committee from submitting the amended draft constitution to the House of Representatives on its deadline on 15/5/2007, so the task was postponed to 23/5/2007 and then the committee submitted on 22/5/2007, one day before the date mentioned, a report to the House of Representatives, in which it stated that reaching a solution to the controversial points is still far away and asked to postpone its mission to another date.²⁶

²⁰ Ibid., p. 135.

²¹ Ibid., p. 101.

²² Dr. Bushra Hussein Saleh, op. cit., p. 229.

²³ Muhammad Ahmed Mahmoud, op. cit., p. 102.

²⁴ Ibid., p. 229.

²⁵ An article published on the www.epc.ae website under the title (Amending the Iraqi Constitution, Contents, Political Positions and Scenarios) Visit Date 2/6/2021.

²⁶ Dr. Bushra Hussein Saleh, op. cit., p. 229.

In the end, it appeared that Article (142) of the Constitution has suspended the provision of Article (126) when it indicated that Article (126) does not work until after the completion of Article (142), which became in the rule of the dead when it indicated that the House of Representatives at the beginning of its work to form a committee to consider the necessary amendments to the Constitution, but the Council did not form that committee and then the provision of that article has fallen by virtue and must apply Article (126) which was drawn The normal way to amend the Constitution while it is still in force.²⁷

2.1.3 Possibilities and necessities of modification

Since I counted years since the application of the Constitution in 2005, there certainly appeared many opportunities and possibilities of amendment that should have been the constitutional texts and the constitutional rule, it is as if it is under test to examine the suitability of the provisions of some of the Constitution to the environment and the Iraqi need, it has become the same as an opportunity for amendment,²⁸ which is as follows: -

1- The function of the constitutional rule is to settle disputes and disputes and not the function of producing and re-producing disputes and disputes in the political community.

2 - The relationship between public satisfaction and full acceptance of the constitutional document and the large number of exclusions and exceptions in the texts of this document is an inverse relationship, the more exclusions and exceptions the less full acceptability and variation of public satisfaction with this document²⁹. Therefore, it should be based on building the principle of partnership and participation and not on the uniqueness and dominance of a specific group of political parties, and therefore the constitutional document must contain premises and principles that ensure compatibility and partnership between all components of the political community and be as far as possible from entering into details and remain general and abstract.³⁰

3- The successful constitutional document is the constituent obligation and the basis for building the state (with) the citizen and not building the state (against) the citizen.³¹

4- Setting a correct constitutional rule, which is not applicable today and applicable tomorrow, is much better than setting an incomplete and incorrect constitutional rule that is applicable today, and its application after this day under the pretext of (realism) would be disastrous. Not everything that is true is a reality and not everything that is true is a reality, and the most important thing is to look to the future, and constitutionally everything that is true today and tomorrow, whether this is true is a tangible reality today or a tangible reality tomorrow or the day after tomorrow.³²

5- The constitutional document of a democratic and federal state does not accept the

²⁷ Dr. Akkab Ahmed Muhammad, op. cit., p. 339.

²⁸ Dr. Bushra Hussein Saleh, previous source, p. 231.

²⁹ Research published on the website of www.iasj.net Dr. Amer Hassan Fayyad, entitled Strengthening Iraqi National Unity between Federalism and Centralization and Amending the Constitution. Date of visit 16/6/2021

³⁰ Muhammad Ahmed Mahmoud, op. cit., p. 109.

³¹ The source of the same .

³² Dr. Amer Hassan Fayyad, same source.

fragmentation of political power nor its concentration and concentration, but rather the distribution of powers, powers, wealth and legislative, executive and judicial institutions between the center and the parties or regions, provinces, states, governorates.³³

6- The provisions of the Constitution should always emphasize the independence, sovereignty and unity of the State on land, people, sky and water. The demand for full sovereignty is a legitimate demand for all peoples and peoples, and striving for it is irreproachable and there is no objection to it.³⁴

It is the opinion of the researcher that every constitutional document anywhere, if it is developed, must work with its provisions, and to apply and implement all its items and articles on the ground complete integrated, do not apply part of it and another part disrupted, according to the interests and whims of certain parties, because some articles remained ink on paper without any application and formed the so-called constitutional crisis, which led to problems and conflicts between blocs and parties Iraq and the Iraqi people were rich Despite the existence of some constitutional texts that contribute to solving these problems and reaching calm the situation and the end of the conflict, the problem of these texts, as we mentioned, lies in the lack of application and work with them.

2.3Reasons for amending the Iraqi constitution and the reforms required in its texts

Due to the circumstances surrounding the writing of the constitution and the urgency in it and the method of voting, it resulted in gaps, which led to the need and necessity of the amendment process for some paragraphs and articles, such as adding or deleting a paragraph or item in order to give rights or remove ambiguity and address and fix the defect in some of its texts, and what is required to be fixed from the texts to suit the requirements of Iraqi society, and the developments due to changes in the economic and political conditions in the country, which imposed a new reality It was necessary to keep pace with it legislatively, because of the importance of this in terms of balance and stability of official institutions, especially the legislative and executive institutions, and thus reflected on society and its stability and development.

Hence, we will try in this section to stand on the reasons for amending the constitution in the first requirement, either the second requirement we will address the aspects of reforms and amendments required in the texts of the constitution and the third requirement we will address the effects of amending the constitution on the legislative and executive authorities.

1.2.3Reasons for amending the Constitution

The amendment of the constitution is of great importance for reasons of importance for the development and filling of gaps and addressing the severe shortcomings in some texts, which are not commensurate with the conditions that exist to build a new, strong and modern Iraq capable of dealing with the challenges at home and abroad and the crises that it faces over the past years, from terrorism and corruption spread in all institutions and insecurity on the one hand, and on the other hand the demands of the protesters for political reform, and from here

³³ Muhammad Ahmed Mahmoud, op. cit., p. 109.

³⁴ Dr. Bushra Hussein Saleh, previous source, p. 231.

we will address the importance and motives of amending the Iraqi constitution in force In several respects: -

1- The amendment procedures and seeking to benefit from the mistakes of the previous constitutional experience during 15 years will lead to the existence of a constitution that is better in terms of application and commitment than it is currently applied.³⁵

2- The predominance of the writers of the constitution to factional interests over national identity, and the speed with which they were written made amending the constitution a necessary necessity to fix those errors, shortcomings and gaps.³⁶

3- The amendment of the Constitution achieves an increase in the area of cooperation and balance between the legislative and executive authorities, as these two authorities (legislative and executive) cannot perform their role in light of the atmosphere of mistrust and chaos between them.³⁷

4- The radical differences between the categories, represented in the Constitution Writing Committee, reflected on the chapters, articles and provisions of the Constitution.³⁸

5 - Iraq was exposed to a situation called the constitutional crisis, and this crisis that occurred as a result of the suspension of the provisions of the Iraqi constitution and kept some of them without application, which raises the question of the reality of this constitutional situation.

6- It seems that Iraq is not far from the protest movement that took place in the streets and squares in some Arab countries to pressure the Iraqi government and political forces to make a set of constitutional amendments that increase the vitality of the political process and to implement broad reforms in it.³⁹

2.2.3 Aspects of reforms and amendments required in the provisions of the Constitution

There are many ambiguous phrases that need to be clarified in this constitution, as well as the need for some texts to interpret, and the need to add the necessary articles in them and others removed, and the activation and revival of some articles that have not been applied definitively, so we see shortcomings, shortages and failures in this document, must be covered by the next amendment to the goal of reform and development in political, economic and social terms, and we can refer to the most prominent of them, which are as follows: -

1- Article 2 / c, which states that (it is not permissible to enact a law that conflicts with the fundamental rights and freedoms contained in this constitution), the writer believes and we share his opinion that this article should be removed because no law can be enacted that contradicts any item of the constitution, not only the item related to rights and freedoms.⁴⁰

2- Article 9 / a states (the Iraqi armed forces and security services consist of the components of

³⁵ Dr. Abdul-Jabbar Ahmed Abdullah, Eng. Niran Adnan Kazim, The Iraqi Constitution of 2005 between Constitutional Stalemate and Political Stagnation, Journal of Political Issues, Issue 54, Al-Nahrain University, Baghdad, 2018., p 100

³⁶ Fathi Al-Jawari, The extent of the need to amend the Constitution of the Republic of Iraq and what is the way to do so, research published on the www.hjc.iq website, visit date 3/7/2021.

³⁷ Dr. Bushra Hussein Saleh, previous source, p. 232.

³⁸ Fathi Al-Jawari, the extent of the need to amend the Constitution of the Republic of Iraq and what is the way to do that, research published on the link www.hjc.iq the date of the visit 3/7/ 2021

³⁹ Ibid., p. 233.

⁴⁰ Muhammad Ahmed Ahmed, op. cit., p. 111.

the Iraqi people ...) and it is better to cancel the word (components) and put the word (sons) or (citizens) of the Iraqi people instead, because the word (components) may be interpreted in an interpretation that makes the armed forces and security services formations of nationalities, sects and clans under the pretext that they are components.

3- Article 9 (b) states that "the formation of military militias outside the framework of the armed forces is prohibited" and the most correct thing is to prohibit the formation of military militias inside and outside the framework of the armed forces.⁴¹

4 - The failure contrary to the liberal democratic trend represented by Article 29, paragraph (a), which states that (the family is the basis of society) and the proposed imposition of amending the text is (the individual is the basis of society and the citizen is the basis of the state).⁴²

5- Issuing a law specifying the salary and allowances of the President of the Republic, and a law regulating the salaries and allowances of the President and members of the Council of Ministers and those of their rank, as required by Articles 74 and 82 of the Constitution.⁴³

6- There are many necessary topics that must be included in the provisions of the current constitution clearly and explicitly, including: -

1. Strengthen the authority of the federal government and impose its control by having a central role in national leadership⁴⁴
2. Distributing its natural resources and investing them fairly.
3. Emphasis on the application of the principle of democracy and human rights in Iraq.
4. The role of women in building society and contributing to political life.⁴⁵

7- Participation of the legislative political process, including oversight and approval of the budget equally between the legislative and executive authorities, with more clarification and detail of the principle of cooperation and balance between the authorities (legislative, executive) and their competencies, because the Constitution granted legislative tasks and powers to the Presidency Council of the Republic by granting it the right to object to laws and decisions voted on by the House of Representatives, and this authority is legislative, while the President of the Republic is part of the executive authority, and the texts of the Presidency Council have been absent and require their cancellation and removal of the Constitution.⁴⁶

8- I mentioned a phrase in the constitutional oath (the application of legislation honestly and impartially ...) any pledge of members of the House of Representatives, that this pledge and commitment is not the responsibility of the members of the House of Representatives because this symbolizes that the application of laws is the competence of the House of Representatives, but their competencies in fact are legislation and control and not implementation.⁴⁷

9- Working to activate constitutional control over laws, and that it is a real and objective

⁴¹ Amer Hassan Fayyad, previous source.

⁴² The source of the same .

⁴³ Fathi al-Jawari, previous source.

⁴⁴ David Cameron, The success of federalism in Iraq, research published on the www.forumfed.org website, p. 11, visit date 19/6/2021.

⁴⁵ Muhammad Ahmed Mahmoud, op. cit., p. 112.

⁴⁶ Dr. Bushra Hussein Saleh, op. cit., p. 234.

⁴⁷ Muhammad Ahmed Mahmoud, op. cit., p. 112.

professional control and not partisan political control.⁴⁸

10 - In Article (92) second paragraph states that (the Federal Court consists of a number of judges and experts in Islamic jurisprudence ...) membership is supposed here to be a specialized legal legal judiciary, assisted by Iraqi experts without being members of other non-legal disciplines and jurists with experience in all religions and sects.⁴⁹

11- As for Article 111, which states (oil and gas is the property of the Iraqi people in all regions and provinces), here he did not mention the rest of the natural resources other than oil and gas.⁵⁰

12- Returning the addition of the deleted text from a previous draft of the constitution that gave Iraqis the rights stipulated in the international human rights conventions ratified by Iraq.⁵¹

13- Article (140), which stipulates the necessity of completing the normalization and census processes and ending with a referendum in Kirkuk and other disputed areas to determine the will of their citizens within a maximum period of 31/12/2007, no item of that article has been implemented⁵². We believe that this article must be revived in a real and serious way and do everything necessary to apply it on the ground.⁵³

14- The constitution described the system of government as (federal), but in fact the concept of the word (union) is a description that describes the form of the state, which is either simple or a federal compound, i.e. federal, and not the system of government.⁵⁴

15- There must be preconditions for nomination to the House of Representatives and not to vote on them.⁵⁵

16. The easy condition for the complex and dangerous subject represented by Article 118, which states (The House of Representatives shall enact in a period not exceeding six months from the date or session thereof, a law specifying the executive procedures for the formation of regions, by a simple majority of the members present) and the majority means 51% of those present, which is a condition of easy to achieve for an intractable and difficult cause, and Article 131, which was adopted by Article 118 came in its condition, which confirms that (every referendum contained in this Constitution shall be successful with the consent of majority of voters, unless otherwise specified).

What is meant is that the composition of the regions is successful by referendum by the majority of the votes in favor, which is an easy condition for a complex and serious issue.⁵⁶

16. The Constitution in force for the year 2005 and its articles 144 with its erroneous wording and ambiguity of its phrases and shortcomings should have been amended by profound means

⁴⁸ Dr. Bushra Hussein, op. cit., p. 234.

⁴⁹ Dr. Amer Hassan Fayyad, previous source.

⁵⁰ Dr. Amer, same source.

⁵¹ Jonathan Morrow, *Weak Continuity: The Iraqi Federal State and the Constitutional Amendment Process*, U.S. Institute of Peace, Special Report No. 168, 2006, p. 16.

⁵² Fathi al-Jawari, previous source.

⁵³ Some call the city of Kirkuk in Iraq small, including all the components of the Iraqi people of Arabs, Kurds, Shiites, Sunnis, Turkmen, Christians and Muslims, it always has partisan conflicts and political, social and even economic problems, the activation of this disabled article leads to solving all outstanding problems.

⁵⁴ Muhammad Ahmed Mahmoud, op. cit., p. 111.

⁵⁵ Dr. Bushra Hussein Saleh, op. cit., p. 234.

⁵⁶ Amer Hassan Fayyad, previous source.

and not by adding new articles to the Constitution and bringing the draft to 186 articles.⁵⁷
17. The Constitution gave broad powers to the Centre in accordance with Article 108 and reduced the powers of the regions.⁵⁸

We believe that it is necessary to participate regions and governorates that are not organized in a region in the process of amending the constitution by activating Article 65, which is suspended, related to the establishment of the Federation Council.

In the end, many of the articles and texts of this constitution need to clarify many of their vague phrases and texts require interpretation, and articles need to be removed and concepts imposed to be added, all these cases must be covered by the process of amending the constitution.⁵⁹

3.2.3 Effects of amending the Constitution

To shed light on the effects of making amendments to constitutional texts, we will divide this requirement into two sections, the first is dedicated to explaining the effects of amending the constitution on the legislative authority and the second section is the effects of amending the constitution on the executive branch.

3.2.3.1 Effects on the legislature

The democratic system works on important foundations, most notably that the people elect representatives of the people who exercise political power under the name of the legislative authority, and since the people are considered the original owner of the political authority, it is their natural right to carry out reviews on the arrangement and organization of one of the authorities, which is the most prominent parliament, and the constitutional amendments result in important effects on the legislative authority, most notably the dissolution of the parliament or the dissolution of one of its chambers, and one of those constitutions is the Swiss Constitution of 1999, as the work on the comprehensive amendment or review Comprehensive of the Constitution, there is the dissolution of the Federal Assembly with its People's Assembly and the Districts, as stipulated in Article 193, paragraph III, which states that "If the people agree to the comprehensive review, the People's Assembly and the provinces shall be re-elected."⁶⁰ As well as the amendment that was made to the Egyptian Constitution of 1971 amended to Article 76 of it, after this article requires that the People's Assembly chooses one candidate for the presidency of the Republic by the proposal of at least two-thirds of its members and with the approval of at least two-thirds and then presents the candidate to the people in a general referendum, but after this amendment became calls for presidential elections for more than one candidate and by direct ballot provided that they obtain the support of a number of deputies parliamentary and local people's councils.⁶¹

⁵⁷ 'Abd al-Jabbar Ahmed 'Abdullah, op. cit., p. 102.

⁵⁸ Khalid Younis Khaled, Does the permanent Iraqi constitution recognize the rights of the Kurdish people? Democratic Papers, Series issued by the Iraqi Center for Democracy Information, No. 6, October 2005, p. 38.

⁵⁹ Muhammad Ahmed Mahmoud, op. cit., p. 112.

⁶⁰ Dr. Maytham Manfi Kazim, previous source.

Muhammad Ahmed Mahmoud, Amending the Constitution (A Study in the Light of the Iraqi Constitution of 2005 in force), Publications of the Media Department in the House of Representatives, 1st Edition, Baghdad, 2010. p. 34.

In Iraq, the Iraqi Basic Law of 1925 has specialized in providing for the dissolution of the House of Representatives, which is one of the two houses of Parliament (National Assembly) consisting of it and the Senate, and this reflects the aspiration of the constitutional legislator to tighten the amendment procedures with the aim of political stability in the state, either the Constitution of the Republic of Iraq for the year 2005 did not address the impact of the constitutional amendment on the legislative authority.⁶²

2.3.2.3 Effects on the executive branch

Since the executive authority is one of the public authorities, it may be affected by the impact of the constitutional amendment carried out by the constitutionally competent authority, and one of the constitutions that affected the amendments to the constitutional status of the executive authority is the French Constitution of 1958, as it changed the method of electing the president to direct election by the people under the 1962 amendment, and other amendments extended the status of the head of state as one of the two organs of the executive authority in 2000 when the term of office of the head of state was reduced to five years Non-renewable once, the amendments that increased the circle of responsibility of the head of state in 2008 as he became responsible in case of breach of his constitutional duties after his responsibility was limited to high treason⁶³

As well as the amendment made by President (Mikhail Gorbachev) to the Constitution of the Soviet Union of 1977, under this amendment obtained very broad powers, so it is possible for the President to exercise the power to dissolve parliament and call for new elections, and declare a state of war in the event of aggression against the Soviet Union, and declare a state of emergency in any region when necessary and propose the enactment of new laws, and negotiate, and sign agreements and treaties, as all administrative organs in the state Subject to the authority of the President, in his capacity as the head of the supreme administrative apparatus of the State, he may also preside over the meetings of the Council of Ministers in the presence of the Prime Minister.⁶⁴

As for Algeria, after the constitutional amendment of 2008, the prime minister was stripped of all the powers that the head of government had before, and power was accumulated in the hands of the president of the republic.⁶⁵

The amendments made by the former Iraqi president are countless, for example, the twenty-third amendment, under which paragraph (c) was included in Article (57) of the 1970 Constitution to give the President of the Republic the power to issue decisions that have the force of law when necessary, and it serves as a legislative authority similar to the authority vested in the Revolutionary Command Council.⁶⁶

As for the Constitution of the Arab Republic of Egypt for the year 2014, it entered into force

⁶² Ibid.

⁶³ Dr. Maytham Munfi Kazim, *ibid.*

⁶⁴ Muhammad Ahmed Mahmoud, *previous source*, p. 32.

⁶⁵ Merah Ahmed, *The Impact of the Constitutional Amendment of 2008 on the Relationship between the Legislative and Executive Authorities*, Master's Thesis, University of Abu Bakr Belkaid - Telseman - Algeria, 2015-2016, p. 195.

⁶⁶ *Ibid.*, p. 33

years ago and no constitutional amendments have been made to it, and also for the Constitution of the Republic of Iraq for the year 2005, no amendments have been made to it so far.⁶⁷

In the end, we see, as the author pointed out, that the constitutional amendment, which achieves a balance between the executive and legislative branches, is compatible with the normal democratic logic.⁶⁸

The end

We conclude from the study of the subject (constitutional amendments and the possibility of making them to the existing Iraqi Constitution 2005) a set of the following conclusions:

1- In the definition of amending the constitution, it is mentioned that it is the addition or deletion of a text from the constitution, but the amendment of the constitution is the revision of the existing constitutional texts.

2- Many years have passed and no agreement has been reached on amending the Iraqi constitution, there is difficulty in the possibility of such an agreement, there is no article that enjoys full political consensus for the amendment because each party or component seeks to make changes commensurate with its aspirations.

3 - The passage of three electoral cycles we see that Article 142 Iraqi has lost its constitutional value, a period is considered the passage of a long period of time in which it was determined to make the amendment, the complex amendment procedures contained in this article made it objectively prohibited.

4- The constitutional provisions that prevent the amendment are part of the constitution and are legal texts that can be amended as any other text is amended.

5 - dealt with most of the constitutions of the world texts related to the rights and freedoms of individuals, either a special document has a constitutional value or in the introduction to the constitution or that some constitutions devoted a full chapter to these rights and freedoms, including the Iraqi Constitution 2005 current, which devoted the second chapter of it to the rights and freedoms where it was stated in Article (126 / II) of it to preserve these basic principles and stipulated that the prohibition of amending the constitution during two consecutive electoral cycles.

6- The constitutional amendment that achieves a balance between the executive and legislative powers is compatible with the sound democratic logic.

7 - to satisfy all components of the Iraqi people and because of the legislator followed this method during the enactment of the Iraqi constitution manifested some gaps that needed to be reconsidered has entrusted the constitution in its article 142 the responsibility of reconsidering the first council convened after the vote on the constitution, which did not limit, which made the idea of amendment is not easy.

8 - The Iraqi Constitution of 2005 is one of the rigid constitutions, especially because of the two constitutional articles 126, which were called the ordinary amendment and Article 142, which was called the exceptional amendment.

9 - The political consensus played an important role in the adoption of the Iraqi Constitution

⁶⁷ Dr. Maytham Munfi Kazim, previous source.

⁶⁸ Mishaal Zahir al-Madi, previous source, p. 35.

2005 and its amendments, in order to achieve the interests of narrow sectarianism. Sources

Sources

1. Dr. Bushra Hussein Saleh, The Iraqi Constitution in force for the year 2005 between challenges and opportunities for amendment (Chapter Three, Chapter One and Chapter Two) as a model, Kufa Magazine, vol. 2, p. 36. 2018
2. Iman Qasim, Amending the Constitution under the Iraqi Constitution of 2005, Al-Rafidain University College Journal of Science, Issue 31, 2012
3. Barriz Abdullah Ali, Constitutional Rules Not Subject to Amendment, Master Thesis, University of Sulaymaniyah, Sulaymaniyah, 2014
4. Jonathan Moreau, Weak Continuity: The Iraqi Federal State and the Constitutional Amendment Process, U.S. Institute of Peace, Special Report No. 168, 2006
5. Khalid Younis Khaled, Does the permanent Iraqi constitution recognize the rights of the Kurdish people? Democracy Papers, Series issued by the Iraqi Center for Democracy Information, Issue 6, October 2005
6. David Cameron, The success of federalism in Iraq, research published on the www.forumfed.org website, p. 11, visit date 19/6/2021.
7. Donia Zad Souih, Procedural and Substantive Controls for Constitutional Amendment in Algeria, Master's Thesis, Hadj Lakhdar University – Batna, Algeria, 2012-2013
8. Al-Razi, Imam Muhammad ibn Abi Bakr Abd al-Qadir 2009, Mukhtar al-Sahih, Misr Printing, Cairo
9. Shamil Hafez Shanan Al-Moussawi, Amending the Constitution and its Impact on the System of Government in the State, 1st Edition, Arab Center, 2018, Egypt
10. Abdul-Jabbar Ahmed Abdullah, Eng. Niran Adnan Kadhim, The Iraqi Constitution of 2005 between Constitutional Stalemate and Political Stagnation, Journal of Political Issues, Issue 54, Al-Nahrain University, Baghdad, 2018
11. Abdul-Jabbar Ahmed Abdullah, Eng. Niran Adnan Kazim, The Iraqi Constitution of 2005 between Constitutional Stalemate and Political Stagnation, Journal of Political Issues, Issue 54, Al-Nahrain University, Baghdad, 2018
12. Abdel Fattah Omar, Al-Wajeez in Constitutional Law, Center for Studies, Research and Publishing, d. i, 1957, Tunisia
13. Akab Ahmed Muhammad, The effectiveness of Article (126) in amending the Constitution of the Republic of Iraq for the year 2005 in the light of Article (142) thereof, Tikrit University Journal of Law, Year 3, Volume 3, Issue 1, Part 1, September 2018
14. Muhammad Ahmed Mahmoud, Amending the Constitution (A Study in the Light of the Iraqi Constitution of 2005 in force), Publications of the Media Department in the House of Representatives, 1st Edition, Baghdad, 2010
15. Merah Ahmed, The impact of the constitutional amendment of 2008 on the relationship between the legislative and executive authorities, Master's thesis, University of Abu Bakr Belkaid - Talsman - Algeria, 2015-2016
16. Meshaal Zahir Al-Mady, Constitutional amendments and their impact on the Jordanian

constitutional system, Master's Thesis, Al al-Bayt University, Karbala, 2015-2016

17. An article published on the www.epc.ae website under the title (Amending the Iraqi Constitution, Contents, Political Positions and Scenarios) Visit Date 2/6/2021.

18. Maytham Manfi Kazem Al-Amidi, The limits of amending the constitution and its impact on the legislative and executive authorities, research published on the link www.amp.annbaa.org the date of the visit 8/3/2021.

19. Fathi Al-Jawari, The extent of the need to amend the Constitution of the Republic of Iraq and what is the way to do so, research published on the www.hjc.iq website, visit date 3/7/2021.

20. Research published on the website of www.iasj.net Dr. Amer Hassan Fayyad, entitled Strengthening Iraqi National Unity between Federalism and Centralization and Amending the Constitution. Date of visit 16/6/2021 .